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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 NICOLE STEWART, ET AL.,

4 Plaintiffs,

5 v.

21 CV 1217 (MKV)  
(and related cases)  
Videoconference

6 NURTURE, INC.,

7 Defendant.

8 -----x

9 New York, N.Y.  
10 August 27, 2021  
11 11:13 a.m.

12 Before:

13 HON. MARY KAY VYSKOCIL,

14 District Judge

15 APPEARANCES VIA VIDEOCONFERENCE

16 GEORGE GESTEN McDONALD PLLC

Attorneys for Plaintiffs Stewart, et al. (21CV1217)

17 BY: LORI G. FELDMAN

DAVID GEORGE

and

18 CALCATERRA POLLACK, LLP

BY: MICHAEL LISKOW

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and

21 LOCKRIDGE, GRINDAL & NAUEN

22 BY: REBECCA PETERSON

23 LEVIN, FISHBEIN, SEDRAN & BERMAN

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and

25 SHUB LAW FIRM, LLC

BY: JONATHAN SHUB

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APPEARANCES (CONT'D)

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BY: KARA ELGERSMA

and

GUSTAFSON GLUEK

BY: MARY NIKOLAI

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BY: ANNICK PERSINGER

LEVIN PAPANTONIO

Attorneys for Plaintiff Gothot (21CV4997)

BY: REBECCA TIMMONS

and

PEARSON, SIMON & WARSHAW

BY: MELISSA WEINER

and

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BY: GARY LYNCH

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BY: GARY GRAIFMAN

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BY: MICHAEL REESE

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BY: ANGELA AGRUSA

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1 (The Court and all parties appearing via  
2 videoconference)

3 THE COURT: Good morning. This is Judge Vyskocil.

4 Ms. Dempsey, are you able to hear me clearly?

5 THE DEPUTY CLERK: Yes, your Honor.

6 THE COURT: All right. Good morning. Would you call  
7 the calendar, please?

8 (Case called)

9 THE DEPUTY CLERK: The most orderly way to do this  
10 would be to go down all the case numbers and get the entire  
11 list of appearances. Starting with 21 CV 1217, please state  
12 your name for the record?

13 THE COURT: Everyone, please be mindful mute your  
14 lines if you're not speaking, but when you're called to speak,  
15 please unmute your line.

16 So who is appearing on behalf of Nicole Stewart?

17 MR. LISKOW: This is Michael Liskow appearing on  
18 behalf of the Stewart plaintiffs. Also, Ms. Feldman, I think  
19 you're muted I'm sorry.

20 THE COURT: I'm sorry. Your name, sir?

21 MR. LISKOW: Michael Liskow.

22 THE COURT: And what firm are you with?

23 MR. LISKOW: I'm with Calcaterra Pollack.

24 THE COURT: Okay. Thank you.

25 MS. FELDMAN: Good morning, your Honor. This is Lori

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1 Feldman. I'm appearing as well for plaintiffs Nicole Stewart,  
2 Summer Apicella and Shannon Fitzgerald, and my partner, David  
3 George, from the same firm is also here this morning.

4 THE COURT: All right. Good morning, Ms. Feldman.

5 MS. FELDMAN: Good morning.

6 THE COURT: And good morning to Mr. George. I'm not  
7 seeing you, but good morning.

8 MR. GEORGE: Thank you.

9 THE COURT: Anyone else for the plaintiffs in the  
10 Stewart action?

11 MS. POLLACK: Good morning, your Honor. This is  
12 Janine Pollack, also from Calcaterra Pollack.

13 THE COURT: All right. Good morning, Ms. Pollack.  
14 Who is going to be taking the lead on behalf of  
15 Ms. Stewart?

16 MS. FELDMAN: Your Honor, I am, Ms. Feldman.

17 THE COURT: Thank you, Ms. Feldman.

18 All right. As Ms. Dempsey said, I think the most  
19 orderly way to do this is to go down the list of cases, but I  
20 assume the same set of counsel is appearing on behalf of  
21 Nurture in all of the cases. Is that correct? And can we get  
22 the appearance for Nurture in the Stewart case?

23 MS. AGRUSA: Hello, your Honor. Good morning. This  
24 is Angela Agrusa. I am here today with my colleague and  
25 partner, Colleen Gulliver, from DLA Piper. We are representing

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1 Nurture, Incorporated, in each of the actions that are going to  
2 be discussed today.

3 THE COURT: All right. Good morning, Ms. Agrusa and  
4 Ms. Gulliver.

5 So, Ms. Dempsey, would you just call each of the  
6 other, I believe we're now up to 16 cases that had been  
7 assigned to me. If you would just call those cases, and if the  
8 plaintiff in each of those cases would please state their  
9 appearance for the record.

10 Is there a court reporter, Ms. Dempsey, or no?

11 THE DEPUTY CLERK: Yes, your Honor. Rose Prater is  
12 with us this morning.

13 THE COURT: Oh, good morning, Ms. Prater. How are  
14 you?

15 THE COURT REPORTER: Good morning, your Honor. I'm  
16 fine. Thank you.

17 THE COURT: Please, when you're not speaking, if you  
18 would turn your video off as well, it would be easier. I'm  
19 having trouble seeing the speakers as well.

20 All right. So, Ms. Dempsey, would you call each of  
21 the 15 other cases then, and we only need the appearances for  
22 the plaintiffs, since the defendant's counsel is appearing in  
23 all of these cases.

24 THE DEPUTY CLERK: Okay. I have the cases listed by  
25 docket number, not by case name. So plaintiff in case 21 CV

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1 1534, state your name for appearance.

2 THE COURT: That's the Smith case, I believe.

3 MS. VAN DYCK: Good morning, your Honor. This is  
4 Katherine Van Dyck of Cuneo, Gilbert and Laduca on behalf of  
5 plaintiffs.

6 THE COURT: All right. Ms. Van Dyck, it's very hard  
7 to hear you so if I call --

8 MS. VAN DYCK: I apologize, your Honor. I'll get  
9 closer to my mic. Is that better?

10 THE COURT: Yes, and if you're going to be addressing  
11 the Court on any point, just keep your voice up. Okay? Thank  
12 you.

13 MS. VAN DYCK: Thank you.

14 MS. PETERSON: Good morning, your Honor. Rebecca  
15 Peterson, also on behalf of plaintiff Smith from Lockridge,  
16 Grindal and Nauen.

17 THE COURT: Good morning, Ms. Peterson.

18 THE DEPUTY CLERK: Case No. 21 CV 1473.

19 THE COURT: Jain against Nurture.

20 MR. SCHAFFER: Good morning, your Honor. Charles  
21 Schaffer for Levin, Fishbein, Sedran and Berman, and I will be  
22 the only one appearing, along with my co-counsel, Jonathan B.  
23 Shub, but he can introduce himself next.

24 MR. SHUB: Good morning, your Honor. Jonathan Shub,  
25 appearing for plaintiff in case 1473, Shub Law Firm LLC.

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1 THE COURT: All right. Good morning, counsel.

2 MR. SHUB: Thank you. Good morning.

3 THE DEPUTY CLERK: Case No. 21 CV 1271.

4 THE COURT: Soto against Nurture.

5 (Pause)

6 Is there an appearance for Soto? From Spencer  
7 Sheehan, anyone appearing?

8 All right. The record should reflect no appearance.

9 MS. AGRUSA: Your Honor, I might share with the Court.  
10 This is Angela Agrusa, counsel for Nurture, that Nurture has  
11 not been served in this case yet. I believe the time to serve  
12 has expired.

13 THE COURT: Okay. Thank you. Thank you very much.

14 THE DEPUTY CLERK: Case No. 21 CV 1882.

15 THE COURT: Hampton against Nurture.

16 MS. ELGERSMA: Good morning, your Honor. Kara  
17 Elgersma, from Wexler Wallace, on behalf of the plaintiffs in  
18 1882.

19 THE COURT: Good morning.

20 MS. NIKOLAI: Good morning, your Honor. My name is  
21 Mary Nikolai with Gustafson Gluek also appearing in 1882.

22 THE COURT: Good morning, Ms. Nikolai.

23 THE DEPUTY CLERK: For 21 CV 2129.

24 THE COURT: And that's Strobel against Nurture.

25 MS. PERSINGER: Good morning, your Honor. Annick



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1 Persinger from Tycko and Zavareei on behalf of plaintiff  
2 Strobel, in 21-CV-2129.

3 THE COURT: Good morning, Ms. Persinger.

4 THE DEPUTY CLERK: 21 CV 4997.

5 THE COURT: Gothot.

6 MS. TIMMONS: Good morning, your Honor. This is  
7 Rebecca Timmons from Levin Papantonio on behalf of the  
8 plaintiffs Gothot.

9 THE COURT: Good morning.

10 MS. WEINER: Good morning, your Honor. Melissa  
11 Weiner, Pearson, Simon and Warshaw in Minneapolis, Minnesota.  
12 My colleague, Rachel Soffin of Milberg is also on the line.

13 THE COURT: Good morning, Ms. Soffin and Ms. Weiner.

14 MS. SOFFIN: Good morning, your Honor.

15 THE DEPUTY CLERK: 21 CV 3499.

16 THE COURT: Gutierrez.

17 MR. BAN: Good morning, your Honor. My name is Bill  
18 Ban. I'm with the firm of Barrack, Rodos and Bacine on behalf  
19 of Angela Gutierrez in case 3499. With me is my partner, Mark  
20 Rosen from the same firm.

21 THE COURT: All right. Good morning, counsel.

22 Mr. Lynch, can you please turn your video off until  
23 you appear?

24 THE DEPUTY CLERK: Mr. Lynch, you're next.

25 THE COURT: Oh, okay.

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1 MR. LYNCH: Can you hear me, okay, your Honor.

2 THE COURT: Yes, I can hear you, but you're taking up  
3 the whole screen. Let her call your case.

4 THE DEPUTY CLERK: 21 CV 2553.

5 THE COURT: And that's Skibicki.

6 MR. LYNCH: Yes, your Honor. Gary Lynch from Carlson  
7 Lynch on behalf of plaintiff Skibicki. And I will turn my  
8 video off, your Honor. I don't know why it's putting me so  
9 prominently.

10 THE DEPUTY CLERK: 21 CV 2101.

11 THE COURT: Westin.

12 MR. GRAIFMAN: Yes, good morning, your Honor. Gary  
13 Graifman from Kantrowitz, Goldhamer & Graifman for plaintiff  
14 Westin.

15 THE COURT: Good morning, Mr. Graifman. How are you?

16 MR. GRAIFMAN: Very well, your Honor.

17 THE DEPUTY CLERK: 21 CV 5344.

18 THE COURT: Robbins against Nurture.

19 MR. REESE: Morning, your Honor. Michael Reese, Reese  
20 LLP, New York, New York. My co-counsel is also on.

21 THE COURT: All right. Good morning, Mr. Reese.

22 MR. REESE: Good morning, your Honor.

23 THE COURT: You're muted, ma'am.

24 MS. DOLGOF: Oh, I'm sorry. Sorry, your Honor. Mindy  
25 Dolgof, The Sultz Law Group for plaintiff Robbins.

L8RPSTEC

1 THE COURT: Good morning, Ms. Dolgof.

2 MS. DOLGOF: Good morning, your Honor.

3 THE DEPUTY CLERK: 21 CV 6632.

4 THE COURT: Philippe against Nurture.

5 MS. RIVAS: Good morning, your Honor. Rosemary Rivas  
6 of Gibbs Law Group on behalf of the plaintiffs Philippe, and my  
7 co-counsel Christopher Leung of Pollock Cohen is also  
8 appearing.

9 THE COURT: All right. Good morning, Ms. Rivas and  
10 Mr. Leung.

11 MR. LEUNG: Good morning.

12 MS. RIVAS: Good morning.

13 THE DEPUTY CLERK: 21 CV 6918.

14 THE COURT: Williams.

15 MR. ROGERS: Good morning, your Honor. Martin Rogers  
16 from Worden Thane PC appearing on behalf of plaintiff Caitlin  
17 Williams.

18 THE COURT: All right. Good morning, Mr. Rogers.

19 THE DEPUTY CLERK: 21 CV 6678.

20 THE COURT: Altuve.

21 MR. ZIMMERMAN: Good morning, your Honor. Tom  
22 Zimmerman for the plaintiffs in the Altuve matter.

23 THE COURT: Good morning, Mr. Zimmerman.

24 MR. ZIMMERMAN: Your Honor, I would just note that we  
25 did file a motion for admission pro hac vice, which is still

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1 pending. So technically, I have not been admitted yet. It was  
2 filed on August 17th.

3 THE COURT: All right. Thank you for calling that to  
4 our attention. The Court grants your motion for purposes of  
5 today's conference, and I will check with the clerk's office as  
6 soon as we hang up to try to get that taken care of more  
7 generally.

8 MR. ZIMMERMAN: Thank you, your Honor.

9 THE DEPUTY CLERK: 21 CV 6861.

10 THE COURT: That's Spencer.

11 MS. BLATT: Good morning, your Honor. Gayle Blatt,  
12 B-l-a-t-t, Casey Gerry, LLP, on behalf of plaintiff Spencer.

13 THE COURT: Good morning, Ms. Blatt.

14 And we have the last case added this morning,  
15 Ms. Dempsey, right?

16 THE DEPUTY CLERK: Yes. It will be as soon as case  
17 assignments acknowledges it. It's 21 CV 5748.

18 THE COURT: And that's Lawrence.

19 MR. HOESE: Yes, your Honor. Good morning. William  
20 Hoese, H-o-e-s-e, from the law firm of Kohn, Swift and Graf,  
21 and I have with me my colleague, Zahra, Z-a-h-r-a, Dean.

22 THE COURT: All right. Good morning, Mr. Hoese and  
23 Ms. Dean.

24 MS. DEAN: Morning.

25 MR. HOESE: Thank you, your Honor.

L8RPSTEC

1 THE COURT: So I believe that should be all of the  
2 appearances, correct?

3 Ms. Dempsey, are any that you're aware of that I've  
4 missed?

5 THE DEPUTY CLERK: No, your Honor. That's the whole  
6 list, as far as I know.

7 THE COURT: All right. Is there anybody on the phone  
8 appearing in a matter which we have not called?

9 All right. Then I'd ask everyone, please, mute your  
10 lines while I just make a few preliminary remarks. We are  
11 proceeding with today's initial conference in these matters by  
12 Teams, doing so remotely, obviously. We're doing that because  
13 of the large number of people involved and the continuing  
14 restrictions in place as a result of Covid-19.

15 Having said that, this is a formal court proceeding as  
16 if we were in open court. As you've heard, we do have a court  
17 reporter with us today, and the contact information for today's  
18 proceeding was posted on ECF so that anyone who wished to do so  
19 could dial in to today's conference. I remind you that, as  
20 with all court proceedings, you're strictly prohibited from  
21 recording or rebroadcasting any portion of today's conference.

22 So as I say, this is the initial conference in these  
23 matters, all of which have been assigned to me as related to  
24 the Stewart case, the first of these cases that was filed.  
25 There are now, to the Court's knowledge, 16 cases that have

L8RPSTEC

1 been filed. They are all being treated by our district as  
2 related and assigned to me, after the MDL panel declined  
3 motions that were filed in this case and in cases pending in  
4 other districts and, frankly, throughout the country, to have  
5 them all treated in a consolidated fashion. They're now being  
6 handled individually in various different districts, and as I  
7 say, all of the cases against Nurture are assigned to me.

8 I have, in the Stewart case, a motion that was filed  
9 seeking consolidation of the cases that were then on file. At  
10 the time the motion was filed, there were many fewer cases. I  
11 think initially, at that point, there were somewhere around  
12 eight or nine. As I say, we're now up to 16 cases.

13 I will hear from counsel to Stewart briefly in support  
14 of the motion, bearing in mind that I have read all of the  
15 papers that you've filed; I have your supplemental submission I  
16 think largely just updating the up-until-then case count, up to  
17 12. As I say, we're now up to 16.

18 It is the Court's understanding, but I will give  
19 defendants an opportunity to be heard, that no defendant has  
20 opposed -- well, that defendant Nurture does not oppose to  
21 consolidation request and that no other party has opposed  
22 consolidation.

23 I will hear from counsel for the Stewart plaintiff, as  
24 I say, the first filed case and the movant.

25 MS. FELDMAN: Good morning, your Honor. Lori Feldman

L8RPSTEC

1 from George, Gesten, McDonald on behalf of the Stewart  
2 plaintiffs.

3 THE COURT: Good morning.

4 MS. FELDMAN: Good morning. So we believe that this  
5 is really the quintessential case deserving of consolidation  
6 under Federal Rule 42(a). Each of these cases are consumer  
7 protection actions alleging that Nurture's baby foods are and  
8 were tainted with toxic heavy metals, including arsenic, lead,  
9 cadmium and mercury, and that Nurture misrepresented or did not  
10 disclose this fact to consumers.

11 All of these cases seek money damages and injunctive  
12 relief barring Nurture from continuing to misrepresent the  
13 truth about its products.

14 We believe that given the lack of objections by  
15 defendants and the consent to consolidation by several  
16 plaintiffs and, in fact, really no opposition to consolidation,  
17 that consolidation is not only proper but it is appropriate in  
18 moving forward for the just and efficient litigation of these  
19 matters. We request that your Honor grant this motion in its  
20 entirety.

21 THE COURT: All right. I have just one question for  
22 you.

23 MS. FELDMAN: Yes.

24 THE COURT: First, your motion originally, even the  
25 proposed order, the latest proposed order, you said there were

L8RPSTEC

1 16 cases.

2 MS. FELDMAN: Yes.

3 THE COURT: And in reality, I think there were only 15  
4 at that point. You were counting one case that I think is not  
5 properly part of what we're talking about, but we now, this  
6 morning, added another case; so we are at 16.

7 MS. FELDMAN: Okay, your Honor. That was an  
8 inadvertent counting on our part. Do we know which case we  
9 were inadvertently counting?

10 THE COURT: I will find my note on that --

11 MS. FELDMAN: Thank you.

12 THE COURT: -- and I'll circle back to it.

13 In the meantime, though, the other question that I  
14 have for you is I had originally understood you to be saying  
15 that -- well, first, I want to confirm that you are asking that  
16 all future cases also be consolidated?

17 MS. FELDMAN: Yes, all future cases alleging economic  
18 damages and alleging consumer protection-type claims.

19 THE COURT: Right. So that's the other question that  
20 I have for you. The original order that you had submitted, I  
21 understood to have said that any personal injury or product  
22 liability claims for non-economic damages --

23 MS. FELDMAN: Yes.

24 THE COURT: -- would not be consolidated. Your latest  
25 proposed order still says that, but I thought that I had



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1 understood that you were asking that they would be coordinated,  
2 though, for purposes of discovery; is that correct?

3 MS. FELDMAN: That's correct, your Honor.

4 THE COURT: All right. Let me just see if the latest  
5 order that you filed still says the same. That is your  
6 request, though, correct?

7 MS. FELDMAN: The request is to keep the two types of  
8 actions, the economic injury cases and the personal injury, I  
9 would say, slash, product liability cases, completely separate.  
10 This has been done by Judge Seybert in the Hain Celestial Baby  
11 Food cases. We think that this is the cleanest way to proceed  
12 with these matters. The matters are really are completely  
13 separate.

14 We think it's going to be a non-issue because there  
15 are no personal injury cases pending anymore. There was one,  
16 the Walls action, which was a multi-defendant case that was  
17 pending --

18 THE COURT: That's what I think was improperly  
19 included in this counsel.

20 MS. FELDMAN: Okay. That case was initially pending  
21 in the Eastern District of New York and -- well, that case was  
22 initially a multi-defendant case, your Honor, but that case was  
23 dismissed. So there is -- and that case had alleged personal  
24 injury claims, but that case was dismissed. There are no  
25 personal injury claims being asserted, as far as I understand.

L8RPSTEC

1           There may be, at this time, personal injury claims  
2 being asserted in an action that we're not aware of; so you  
3 might want to ask if an attorney on this hearing has personal  
4 injury claims that they are asserting against Nurture. But we  
5 believe that it's really the most effective and efficient way  
6 to proceed with the litigation, to keep everything separate.

7           THE COURT: All right. So the other question I have,  
8 you say, your paragraph 2, I'm looking at your original  
9 proposed order and the new one.

10          MS. FELDMAN: Yup, yup.

11          THE COURT: So first of all, you talk about personal  
12 injury and product liability claims for non-economic damages?

13          MS. FELDMAN: Yes.

14          THE COURT: I don't know what that means. I mean,  
15 personal injury claims normally do seek money damages; do they  
16 not?

17          MS. FELDMAN: Well, so here's what we mean by this.  
18 What we mean by this is in a class action like the ones that  
19 are in front of you, your Honor, like the Stewart action, these  
20 cases --

21          THE COURT: Right.

22          MS. FELDMAN: -- allege consumer protection claims,  
23 and they are seeking money damages, but they are seeking  
24 economic damages arising from damages, I would say just very  
25 colloquially, that arise at the cash register when they

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1 purchase the product. They are not alleging damages arising  
2 from a damage to the person.

3 So that is the distinction. They are economic versus,  
4 you know, damages, you know, that one would assert for being  
5 hurt.

6 THE COURT: You mean actual damages, injury to the  
7 person?

8 MS. FELDMAN: Right.

9 THE COURT: Yes, well, if I sign your order, I'm going  
10 to change this from non-economic damages to damages for bodily  
11 injury.

12 MS. FELDMAN: That's fine.

13 THE COURT: That's what you mean, right?

14 MS. FELDMAN: Sure, sure.

15 THE COURT: Okay. Second, in your original proposed  
16 order that you filed at 32-2 on ECF -- I don't have the ECF  
17 number for your latest order -- but originally, you said that  
18 those personal injury and product liability claims shall  
19 proceed on a separate tract with the consolidated actions but  
20 shall be coordinated.

21 You seem to have dropped in your latest proposed order  
22 the language that says they shall be coordinated --

23 MS. FELDMAN: Right.

24 THE COURT: -- and I don't really understand that. To  
25 the extent that somebody from Nurture has to be deposed in each

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1 of these actions, why wouldn't it make sense for them to be  
2 coordinated to the extent feasible?

3 MS. FELDMAN: Well, there are very different types of  
4 actions, your Honor, and those actions are not going to be  
5 class actions, and they're going to proceed very quickly and on  
6 a very different type of track.

7 Now, we're not fundamentally opposed to it. So if  
8 your Honor feels that any personal injury or bodily injury-type  
9 litigation must be coordinated, if this type of case does end  
10 up being brought, we would not oppose it, of course.

11 But like I said earlier, we were following the way in  
12 which the judge in the Hain case separated the cases as a model  
13 for what has been done in another federal district in order to  
14 keep the cases completely separate.

15 THE COURT: Okay. I understand.

16 MS. FELDMAN: If your Honor prefers coordination,  
17 that's perfectly, of course, acceptable.

18 THE COURT: All right. I don't have a strong feeling.

19 So let he hear from counsel from Nurture, unless  
20 there's anything further that you want to say, and then I will  
21 allow any other plaintiff who wishes to be heard to do so.  
22 Okay?

23 So, Ms. Agrusa?

24 MS. AGRUSA: Yes, your Honor. Thank you very much. I  
25 want to just back up a moment because I want to talk a little

L8RPSTEC

1 bit about the allegations only insofar as they relate to the  
2 way in which the proposed order has been framed.

3 It is true, your Honor, that counsel is claiming  
4 allegations regarding what they call as heavy metals in these  
5 products. I'd like to, first and foremost, introduce Nurture.  
6 Nurture is a New York-based company. It is a maker of organic  
7 baby food. The products that are in Nurture's baby food are  
8 products that come from the soil; fruits, grains and  
9 vegetables.

10 Any of these elements, cadmium, mercury, arsenic and  
11 lead that counsel described, are in the very vegetables and  
12 fruits that come from the soil. Nurture is not adding metals  
13 to baby food, period. These same fruits and vegetables are the  
14 ones that nutritional gatekeepers of families, parents buy in  
15 grocery stores.

16 THE COURT: All right. Ms. Agrusa, I'm going to give  
17 you a little latitude but --

18 MS. AGRUSA: I understand, your Honor.

19 THE COURT: -- I really don't want to hear about the  
20 merits today.

21 MS. AGRUSA: I understand.

22 THE COURT: Okay.

23 MS. AGRUSA: Of course, your Honor. Of course. The  
24 reason I raise that is because one of the primary concerns I  
25 have with the proposed order is just the nature of the way the

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1 title of the order was identifying this proceeding, In re:  
2 Nurture heavy metals baby food litigation.

3 My request is to strike the words "heavy metals." As  
4 I just gave some background, we are obviously in dispute over  
5 that issue, and so we would instead propose In re: Nurture  
6 baby food litigation.

7 I have a few other issues I want to discuss with the  
8 proposed order, but I want to, obviously, go to your Honor's  
9 question. First, we do not oppose consolidation and  
10 coordination of the class actions alleging what we would say is  
11 advertising injuries, right, the 16 cases that your Honor  
12 identified today.

13 We agree that product liability actions that are  
14 brought on an individual basis by plaintiff would not be  
15 appropriate to coordinate in this proceeding.

16 THE COURT: To coordinate, nevermind consolidate.  
17 Okay. So you're in agreement, then?

18 MS. AGRUSA: Yes, with one caveat, your Honor. We  
19 don't know -- there are no personal injury product liability  
20 cases pending before your Honor or in the Southern District of  
21 New York. So the only point that I'm making, your Honor, is if  
22 one is filed, it may very well at that time be appropriate to  
23 coordinate it.

24 It is difficult for me to agree to coordination of  
25 something that does not exist, and so I certainly reserve the

L8RPSTEC

1 right. I agree with your Honor for purposes of discovery, we  
2 will want to coordinate as much as possible. At the moment,  
3 though, we're speaking a little bit theoretical because there  
4 are no claims of that nature.

5 THE COURT: All right. Let me just interrupt you. If  
6 I were to amend this proposed order to say: Absent further  
7 order of the Court, any future personal injury actions... and  
8 then continue with the rest of what's in the proposed order,  
9 does that address your concern? And then I'll hear from  
10 Ms. Feldman on whether that's satisfactory from the plaintiff's  
11 point of view.

12 MS. AGRUSA: I think that would be fine, your Honor.

13 THE COURT: Ms. Feldman?

14 MS. FELDMAN: That would be fine, your Honor, and I  
15 would like to be heard with respect to the title issue.

16 THE COURT: I understand. I'm going to come back to  
17 you. I'm going to come back to you.

18 MS. FELDMAN: Thank you.

19 THE COURT: But I will tell you, I am inclined to  
20 grant that. I don't think it's necessary to say in the title  
21 what you're alleging. I think calling it "Nurture baby food  
22 litigation" is enough of an identifier for our purposes, but  
23 I'll hear from you after I finish with Ms. Agrusa.

24 MS. FELDMAN: Very good. Thank you.

25 THE COURT: Thank you.

L8RPSTEC

1 MS. AGRUSA: And, your Honor, with respect to the  
2 proposed dates, I don't know if you would like to address the  
3 dates that are set forth in the --

4 THE COURT: I'd like to wait on that until we have a  
5 consensus, or I hear from everyone on whether there's any  
6 opposition to consolidation. All right. We'll talk about the  
7 dates at the very end.

8 MS. AGRUSA: Very well, your Honor.

9 THE COURT: Anything else from you then, Ms. Agrusa?

10 MS. AGRUSA: I do not have any, no, your Honor, thank  
11 you.

12 THE COURT: All right. Ms. Feldman, I'll hear from  
13 you on the title or the caption, but as I say, I really don't  
14 see why the word "heavy metal" has to be in there.

15 MS. FELDMAN: Well, there is other litigation pending  
16 against Nurture on a variety of other issues relating to baby  
17 food; so this is a unique identifier with respect to this case.

18 THE COURT: Where is there going to be confusion,  
19 though? You describe in the other paragraphs what it is that's  
20 going to be consolidated with this. You list the 16 pending  
21 cases in the first paragraph.

22 MS. FELDMAN: Yes.

23 THE COURT: Though, as I say, I think you still have,  
24 is it Wood, that doesn't belong there? Is that the one we  
25 said?



L8RPSTEC

1 MS. FELDMAN: I believe that's the one.

2 THE COURT: Yes. And you need to add the one that  
3 was --

4 MS. FELDMAN: Correct.

5 THE COURT: -- added this morning, but otherwise, you  
6 list all of those. Then you say that any future cases will be  
7 consolidated, and you describe in paragraph 3 what those cases  
8 are, consumer protection-type claims against Nurture. If you  
9 want to say there alleging, you know, with more of a  
10 descriptor, that's fine.

11 MS. FELDMAN: Okay.

12 THE COURT: But I think the caption then should be:  
13 In re: Nurture baby food litigation.

14 MS. FELDMAN: That would be acceptable, your Honor.

15 THE COURT: All right. Ms. Agrusa, does that work for  
16 you?

17 MS. AGRUSA: That's fine, your Honor.

18 THE COURT: All right. Thank you.

19 Then let me give any other plaintiff who wishes to be  
20 heard, the opportunity to lodge any objections to consolidation  
21 of these 16 cases and any future cases alleging the consumer  
22 protection-type claims of the type at issue here. Anyone else  
23 wish to be heard?

24 (Pause)

25 All right. Hearing none, then I am going to enter the

L8RPSTEC

1 order consolidating these. I'm also going to make it clear in  
2 the order that this was with the consent of Nurture and no  
3 objection from any other plaintiff.

4 All right? Now, the one other thing that we haven't  
5 really talked about, I assume these are purported class  
6 actions, right, Ms. Feldman?

7 MS. FELDMAN: Yes, your Honor. They are proposed  
8 class actions.

9 THE COURT: Yes, and are all 16 of them putative class  
10 actions?

11 MS. FELDMAN: Yes, they are, your Honor.

12 THE COURT: All right. You do say that in your first  
13 line, but we hadn't talked about it; so I wanted to just  
14 confirm it then.

15 All right. Then, the only other issue that I think we  
16 should talk about is the schedule.

17 So, Ms. Feldman, you've put a little more meat on it  
18 in the latest order that you put in front of me; so why don't  
19 we talk through that. You ask for a deadline for any motions  
20 seeking interim lead counsel appointment by September 28th or  
21 ten days after this order, whichever is later. I don't really  
22 like the "whichever is later."

23 I mean, why are we waiting until the end of September?  
24 It's now August 27th. If we could, I'd like to get these cases  
25 moving. I'm going to just give you my thoughts, and then I'll

L8RPSTEC

1 hear from you. Okay? So that's my first reaction.

2 Twenty-one days for oppositions is fine, but I don't  
3 like this "or whichever is later." I'd rather put firm dates  
4 in the order that we're going to enter.

5 MS. FELDMAN: All right.

6 THE COURT: And then any replies, we'll talk about the  
7 reply date. Thereafter, then the deadline for filing the  
8 consolidated complaint, 60 days seems a little long to me, and  
9 I wonder if, given how long these cases have been out here  
10 particularly with the delay by reason of the MDL, it couldn't  
11 be done sooner than 60 days after the order on appointment of  
12 counsel, but again, I'll hear from you on that.

13 I think the 45 days to reply is reasonable, and then  
14 the same with the briefing schedule, sounds okay to me. Okay?

15 MS. FELDMAN: Okay, your Honor.

16 THE COURT: So any reaction from you, and if not, I'll  
17 hear from Ms. Agrusa.

18 MS. FELDMAN: Yes, your Honor. Really, the sole  
19 reason why additional detail was added to the scheduling on the  
20 lead counsel appointment motions is because of where we are now  
21 in the calendar. So we are approaching the month of September,  
22 and September is chockful of religious holidays throughout the  
23 month of September. That is really the only reason. So we  
24 have upcoming, we have, well, Labor Day, but then --

25 THE COURT: And then Rosh Hashana.

L8RPSTEC

1 MS. FELDMAN: We have Rosh Hashana 9-7 to 9-8, the  
2 following week is Yom Kippur.

3 THE COURT: What is the date of Yom Kippur?

4 MS. FELDMAN: Yom Kippur the 16th through the 17th.

5 THE COURT: 16th through the 17th.

6 MS. FELDMAN: Yes, yes. And then Sukkoth is 9-21 to  
7 9-22, which takes us really through the -- well, with Labor Day  
8 the first week and then Rosh Hashana the second week, Yom  
9 Kippur the third week, we really wanted to take those out of  
10 those days in fairness to all colleagues.

11 THE COURT: I understand, and I respect religious  
12 observance --

13 MS. FELDMAN: Thank you.

14 THE COURT: -- I just didn't have in my head.

15 MS. FELDMAN: That's okay.

16 THE COURT: All right.

17 Ms. Agrusa, the 28th does seem, in light of the  
18 holidays, to be a reasonable date.

19 MS. AGRUSA: Your Honor, that's fine with us. I,  
20 candidly, didn't feel comfortable agreeing to dates without,  
21 you know, making sure that whomever is lead counsel has some,  
22 obviously, say in the dates. I understand that there may be  
23 unsettled business on that end, but from the defense  
24 perspective, the deadline -- that proposed deadline works.

25 THE COURT: All right. So we'll say that any motion

L8RPSTEC

1 for appointment of lead counsel is due on or before  
2 September 28th, period. I'm not allowing all the other stuff.

3 MS. FELDMAN: Thank you, your Honor.

4 THE COURT: Opposition is 21 days, and then reply, I'm  
5 going to put a date, not 21 days, but I'll count it out and put  
6 the date.

7 MS. FELDMAN: We did 14 days, which was November 2nd.

8 THE COURT: Okay. I don't think 14 days is needed. I  
9 think seven days is fine.

10 MS. FELDMAN: Okay.

11 THE COURT: All right? So whatever those dates come  
12 out to be, we're going to put in firm dates.

13 MS. FELDMAN: Okay.

14 THE COURT: All right? Then I understand your point  
15 with respect to the filing of an amended complaint, but I think  
16 what I'm going to do is enter this order and say "absent  
17 further order of the Court;" so that whomever gets appointed  
18 counsel if, for some reason, has a problem with these dates,  
19 which I have to say otherwise appear to me to be reasonable,  
20 then that appointed counsel can come back and ask for more  
21 time.

22 Unless, Ms. Agrusa, you, as counsel for the defendant,  
23 obviously, will be the one responding to the consolidated  
24 complaint; so if 45 days is a problem, you can tell me that  
25 now.

L8RPSTEC

1 MS. AGRUSA: No, your Honor. That should not be a  
2 problem.

3 THE COURT: Okay. All right. So then I think with  
4 that I am going to shorten the -- well, no, it's fine.

5 All right. So I think with that, that's the terms of  
6 the order which we will get entered.

7 MS. FELDMAN: Thank you.

8 THE COURT: Is there anything else that we should talk  
9 about today?

10 MS. AGRUSA: Yes, your Honor. The one remaining issue  
11 that I did want to speak about with respect to the order is we  
12 will be filing a motion to dismiss the complaint. We have  
13 shared that with at least the Stewart counsel.

14 We would like your Honor's permission or ruling to  
15 waive the pre-motion letter requirement --

16 THE COURT: Yes.

17 MS. AGRUSA: -- that normally applies. So we would  
18 like that to be included in any proposed order here, or at  
19 least some agreement.

20 THE COURT: The final paragraph, where I say the  
21 deadline for filing a response is 45 days after the filing of  
22 the consolidated amended complaint, I will put a sentence in  
23 there that says: Leave to move to dismiss is granted and the  
24 requirement for the pre-motion conference is waived.

25 MS. AGRUSA: Thank you, your Honor.

L8RPSTEC

1 THE COURT: All right. Ms. Feldman, I assume there's  
2 no objection to that?

3 MS. FELDMAN: No objection, your Honor.

4 THE COURT: All right. Anything else, Ms. Agrusa?

5 MS. AGRUSA: No, your Honor. I don't have anything  
6 else today.

7 THE COURT: All right. Ms. Feldman?

8 MS. FELDMAN: No, your Honor. Thank you.

9 THE COURT: All right. Is there anything from any  
10 other counsel? Anybody wish to be heard on any other point?

11 All right. Then I think we stand adjourned.

12 I thank Ms. Prater, our court reporter, for your  
13 patience, and I wish everyone a good rest of the day and a nice  
14 weekend.

15 (Adjourned)